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RECORD OF ORAL HEARING

UNITED STATES PATENT AND TRADEMARK OFFICE

BEFORE THE BOARD OF PATENT APPEALS
AND INTERFERENCES

Ex parte RODNEY G. JOHNSON

Appeal 2009-005701
Application 10/663,436
Technology Center 3600

Oral Hearing Held: December 3, 2009

Before JENNIFER D. BAHR, STEFAN STAICOVICI, and FRED A. SILVERBERG, *Administrative Patent Judges*.

ON BEHALF OF THE APPELLANT:

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34 The above-entitled matter came on for hearing on Thursday, December 3,
35 2009, commencing at 9:30 a.m., at the U.S. Patent and Trademark Office,
36 600 Dulany Street, Alexandria, Virginia, before Jan Jablonsky, Notary
37 Public.

PROCEEDINGS

MR. LITMAN: How are you this morning?

JUDGE BAHR: Fine, thanks.

MR. LITMAN: May it please the Court, I would like to start off with a little background on the technology itself and its use in the marketplace to explain the significance of the actual advances and the technology represented by these claims.

In the gaming industry one of the largest concerns is the fraud committed on the casino by exchanging cards, marking cards, adding cards into the decks, because this changes the odds. It gives the player an absolute advantage, and the casinos are there to make money, not surprisingly. What is critical in this is the control of the cards, the identification of the cards that are being used in the casino at any time.

The present technology focuses on one particular element, which is in the last limitation in claim 20, for example. That is that there is a sensor in the card shuffler which reads each card individually. That limitation in itself is not new. That is shown by Roblejo. It is known in the art. We're not arguing that that in itself is novel. What is novel is that the identity of each card is displayed on the shuffler itself by an image of the suit and rank of that particular card. What is critical in this regard is that this element ties into other capabilities of the shuffler in detecting fraud.

What happens is the card is identified and displayed, but that card that's being identified can also be particularly a fraudulent card, and so the presence of a fraudulent card will be immediately detected when it is reinserted into the shuffler for reuse. The benefit of this is that this gives an

1 instantaneous recognition of the use of a false card in the previous hand, and
2 that can be backtracked immediately to the player that used it. This is much
3 more efficient than what is going on with Roblejo. Roblejo has been cited as
4 showing far more than it actually discloses.

5 There are two elements in the disclosure of Roblejo that are being
6 cited in the rejection. Those elements are on column 4, lines 11 through 14,
7 and column 4, lines 31 through 38. What Roblejo says here is that when a
8 false card, damaged card, marked card is discovered in the shuffling
9 operation, it is ejected by some undisclosed mechanism. He gives a broad
10 general statement to this effect. But if you look at Roblejo, the capability of
11 ejecting a false card is not only not enabled, but is highly problematic and
12 does not teach what is in our claim, which is the display of an image of a
13 specific card that has been just recently inserted in the machine to show that
14 it's fraudulent.

15 Specifically, Roblejo says the apparatus sends a signal, either
16 audio -- audible, visual to a network administrator by ejecting a card which
17 does not belong in the set. Now for Roblejo to eject a card that does not
18 belong in the set, particularly in the way that Roblejo reads the cards, he has
19 to insert the card into the carousel chamber, identify at some point that it is
20 an erroneous card -- and he cannot do that until essentially the complete set
21 of cards has been put into the apparatus because he cannot detect a double
22 card until all the cards are in the apparatus -- then rotate the carousel around
23 to the ejection position and then eject a card which he believes is fraudulent.

24 The improvement in our case is that upon insertion of the card into the
25 device, we can get that instantaneous display of the suit and rank of a card to
26 know immediately that that card is fraudulent, and therefore immediately

1 trace that card back to the previous hand used. Roblejo does not have
2 anywhere in here specifically a display on the shuffler. Roblejo does not
3 say, "Display the suit and rank of a card." He may give a buzzer warning or
4 flashing lights when the card is ejected, but the only step that Roblejo
5 provides in alerting the possibility of a damaged, bent, fraud marked card is
6 ejecting the card.

7 The Examiner attempts to bring additional art into play to establish
8 that it would be obvious to do so, but the primary reference that he uses to
9 show the display of the suit and rank of a card, and in fact the only
10 secondary art that shows the display of the suit and rank of a card is
11 basically a handheld toy game, in which you have the entire game being
12 played with simulated cards, simulated deck, and the rules that you want to
13 play. You push buttons and it shows you the cards that it has. There is no
14 reading of cards, there's no fraudulent -- no display of fraudulent cards by
15 suit and rank or anything else.

16 It is impossible for Macheel, the secondary reference which shows the
17 display of suit and ranks, to have fraudulent cards. Everything is
18 preprogrammed in by way of software. It is totally unrelated to any element
19 of fraud whatsoever. All it says is that it displays all the cards being used by
20 the player at that time. There is no nexus in going from what is in Roblejo,
21 which does in fact show the reading of individual cards and the ejecting of a
22 damaged card or a fraudulent card through complete physical use of the
23 apparatus and ejection of the card, and tying that to what is in the invention
24 as in claim 20, the last line, which is giving a visual display of the suit and
25 rank of the actual card identified. That is not shown in any art of reference.

1 It's also important to note that in some of the sub-claims there is a
2 specific reference, which is referred to in the brief of displaying specific
3 cards which are absent from the entire set of cards have been reviewed, so it
4 would show when cards had been removed from the deck. It is absolutely
5 impossible for Roblejo to show cards that are absent, because the only
6 information he provides is the cards as present. There is no showing in
7 Roblejo or Grauzer or Macheel of the display of cards by their suit and rank
8 that are absent from the deck.

9 JUDGE BAHR: But Roblejo does make a determination that cards
10 are absent from the deck, correct?

11 MR. LITMAN: He makes a determination that there is a complete set
12 of cards or not.

13 JUDGE BAHR: Or that there is an incomplete --

14 MR. LITMAN: Or not, right, which would inherently say some cards
15 are absent. But there is no ability to display the actual cards that are, in fact,
16 absent. Roblejo's only signal is the ejection of cards that are in excess,
17 fraudulent, marked, or damaged. He can't eject a card that isn't there.

18 JUDGE BAHR: Well, Roblejo does in column 4, line 14 -- I'm sorry,
19 13 -- it says, "by ejecting a card which does not belong." Then it says, "or
20 by any other means to indicate an inaccurate deck." And I agree with you,
21 that still doesn't say it's displaying it by rank and suit. But doesn't that open
22 up a possibility that maybe the card is not ejected, and that there is some --

23 MR. LITMAN: I think the way this language is presented, this is a
24 supplement to the ejecting, because what it said -- "the apparatus sends a
25 signal, either audible or visual -- to a network administrator by ejecting a
26 card." That "by ejecting" is the actual step. There could be a buzzer, a

1 clicking, a flashing light that goes on, the signal that in fact the card is being
2 ejected for a special purpose. But I think that ejecting of the card is
3 absolutely a critical and required element for display by Roblejo of the --

4 JUDGE Bahr: Well, it may not be ejecting a card, because it may,
5 in fact, have determined that there were -- that it was an incomplete deck, in
6 which case it wouldn't be ejecting it.

7 MR. LITMAN: And then the buzzer clicking would be going out.
8 But I agree that is a possibility. But still there is nothing in any of the other
9 references that would show that with the timing reflected in the claim of
10 reading the card as it passes from the in-feed into the shuffling area that the
11 card would then be signaled for display by suit and rank as frauds. This
12 gives an earlier indication that could be possible from Roblejo, which has to
13 ascertain the entire set of cards at that time.

14 Roblejo has broad language, no description, no enablement, no
15 structure that would allow what is being done in our claims to be done. This
16 is the kind of reference that patent prosecutors hate, because it says
17 everything and nothing, because there are words there that can be interpreted
18 any way you like. It doesn't do what we have, and the other references do
19 not support it.

20 Looking at the other independent claims, similar arguments have been
21 presented specifically for those limitations. Let me refer to -- okay.
22 I -- okay. I pointed out that Macheel does not have a flaw identification
23 relevance whatsoever, that it is -- am I speaking too loudly?

24 THE REPORTER: No, you're fine, thank you.

25 MR. LITMAN: I've been accused of that before -- cannot have any
26 indication of relevance to full identification. Applicants do not claim they

1 invented a display screen with a suit and rank on it. But the display screen
2 on the shuffler to give immediate identification to the pit crew of the
3 presence of a particular fraudulent card and identifying that fraudulent card
4 so that it can be immediately tracked back to the previous hand of play, is
5 such a significant advance in security in the casinos as to clearly be an
6 obvious step from what was done by Roblejo in merely ejecting a card.

7 Going to Grauzer, does not have any impact on the failure of Roblejo
8 shown above. There is no disclosure of the visual display of the suit or rank
9 of particular cards having deficiencies or excesses in the card rank.
10 Grauzer's display has inputs from the dealer, status of shuffler jams, counts
11 on how many times the system's been used. Again, there is no teaching that
12 one should display on the shuffler the suit and rank of a card that is defective
13 or absent and the benefit of that showing. That is not shown by the art.

14 JUDGE BAHR: And that's consistent with the Examiner's -- or at
15 least not inconsistent with the Examiner's findings, too. I think Grauzer was
16 only relied upon by the Examiner for placement of the card reader --

17 MR. LITMAN: Yes. For what the Examiner shows Grauzer for, the
18 physical placement of the card reader, I agree. But the fact is the invention
19 resides in the use of the information obtained by that display at that time
20 directly after the card put to show the suit and rank of a card. If you can just
21 imagine in the casino if someone comes in with a masked card, a hidden
22 card, plays it in a hand with a maximum bet on it of thousands of dollars,
23 wins the bet and walks out, Roblejo, five minutes later, ten minutes later,
24 would be able to say, "Something is wrong with this deck." In the present
25 circumstances, upon insertion of that hand back into the shuffler
26 immediately after play, within five seconds we would know of the fraud.

1 That's enough to catch somebody before he walks out the door, and to a
2 casino, that's important.

3 JUDGE BAHR: I can understand your position. I don't have any
4 questions.

5 MR. LITMAN: Thank you very much.

6 JUDGE BAHR: Thank you. We'll take this case under advisement.

7 (Whereupon, at 9:18 a.m., the proceedings were concluded.)